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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Letter dated 3 November 1993 from the Permanent Representative of Slovenia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a paper entitled "Towards the establishment of the post of the United Nations High Commissioner for Human Rights".

I should be grateful if you would have the present letter and the paper circulated as a document of the General Assembly under agenda item 114 (b).

(Signed) Danilo TÜRK
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Annex

TOWARDS THE ESTABLISHMENT OF THE POST OF UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

I. GENERAL

1. The World Conference on Human Rights (Vienna, 14-25 June 1993) recommended to the General Assembly that, when examining the report of the World Conference at its forty-eighth session, it begin, as a matter of priority, consideration of establishing the post of High Commissioner for Human Rights for the promotion and protection of all human rights.

2. In order properly to assess the actual scope of this recommendation, it should be borne in mind that the World Conference adopted an ambitious and potentially far-reaching programme for the promotion and protection of human rights, which provides the substantive framework for the elaboration of the mandate of the High Commissioner for Human Rights. Furthermore, the Conference expressed concern over the growing disparity between the activities in the field of human rights and human, financial and other resources available to carry them out and called for an increase in the proportion of the regular budget allocated to the Centre for Human Rights. However, the Conference did not, and could not, recommend specific measures necessary to eliminate the mentioned disparity between aspirations and resources. That remains to be done by the relevant United Nations organs, including, in particular, the General Assembly.

3. The purpose of the present paper is to offer some ideas for discussion and action recommended by the World Conference. While the discussions carried out so far have clarified some issues, there is a need for further clarification of several closely related but distinct issues: the immediate improvements required in terms of the functioning of the Centre for Human Rights; the mandate of and functions to be performed by the High Commissioner; and the relationship between the Centre and the High Commissioner, including the question of how best to achieve the transition. A three-part approach might be appropriate. The first and most immediate step would be to begin to develop a more effective approach within the Centre for Human Rights to addressing the tasks defined by the World Conference. Another aspect, to be pursued in parallel, would be to develop the mandate of the High Commissioner, while the third and final step would be to establish the post and to appoint the High Commissioner. That final objective should be achieved, if possible, during the forty-eighth session of the General Assembly, but no later than 1995. The fiftieth anniversary of the United Nations should be marked, inter alia, by the capacity of the United Nations to address human rights issues in accordance with the needs of our time.

4. In addressing the general tasks identified by the World Conference and the needs concerning the work of the Centre for Human Rights, the General Assembly should, at its forty-eighth session, consider the aspects of the High Commissioner's mandate which are already within the competence of the Centre for Human Rights. It is important to agree that progress must be immediate. Real and immediate progress with respect to the functioning of the Centre for Human Rights would enable the debate on the High Commissioner to become practical, linked to actual needs, to go beyond the present stage of discussion at which

much energy is devoted to consideration of hypothetical and relatively abstract options.

II. IMPROVEMENTS NEEDED IN THE EXISTING UNITED NATIONS STRUCTURES IN HUMAN RIGHTS

5. The need for strengthening the Centre for Human Rights has been stressed in a number of statements by various United Nations organs and, most recently, by the World Conference. The Conference emphasized that the Centre should be assured adequate means for thematic and country rapporteurs, experts, working groups and treaty bodies. While the Conference did not specify the modalities of those tasks, it elaborated on the other major objective concerning the Centre for Human Rights: the enhancement of its programme of advisory services and technical assistance. It recommended expansion and better management of the existing voluntary funds as well as enhancement of transparency in the decision-making process. The World Conference also requested an increase in resources commensurate to the expanded mandates of the Centre for Human Rights.

6. One of the two major tasks that should constitute the agenda for immediate improvement within the Centre for Human Rights is to improve its facilities for dealing with the following neglected areas:

(a) Implementation of economic, social and cultural rights;

(b) Protection of the rights of women;

(c) Expanded activity related to the rights of the child;

(d) Promotion and protection of the rights of persons belonging to national, ethnic, linguistic and religious minorities.

In these areas the secretariat must be established or developed well above the present level. The expertise and facilities should also go beyond the realm of law and hitherto developed methods of work in the field of human rights. They should facilitate a meaningful dialogue with Governments and non-governmental actors with regard to a variety of policy issues and be able to draw on the existing expertise elsewhere in the United Nations system.

7. The other major task is the need for a general improvement in reporting on problems related to the realization of human rights. In this context, it should be emphasized that effective protection of human rights requires strengthening of the existing treaty-based mechanisms as well as thematic and situation-specific mechanisms established in recent years. This task includes:

(a) Elaboration of methodologies for country-specific reporting on violations of human rights (at present the quality and comprehensiveness of these reports varies);

(b) Improvement of the secretariat support to the work of treaty-based organs in the field of human rights, to the experts mandated with preparation of reports on various topics and to Charter-based organs dealing with violations of human rights;

(c) Improvement in the systems of collection and elaboration of information related to the problems in the field of the realization of human rights and the creation of a unified system of databases.

8. The improvements in the areas mentioned in the preceding two paragraphs would be necessary also from the perspective of advisory services and technical assistance to Governments needing such assistance.

9. These improvements require, inter alia, enhancement of the level and volume of expertise within the Centre for Human Rights and an appropriate level of technical-secretariat support to the work of human rights organs. The financial implications are discussed below.

III. THE HIGH COMMISSIONER FOR HUMAN RIGHTS

A. Mandate

10. The General Assembly will consider various aspects of the idea of establishing the post of the High Commissioner for Human Rights at its forty-eighth session in 1993. That debate should be linked to practical action concerning the improvement and strengthening of the Centre for Human Rights: an agreement on the mandate, the modalities of work and the position of the High Commissioner for Human Rights should be facilitated by the practical action for strengthening of the Centre for Human Rights. However, it is important that broad agreement on the mandate of the High Commissioner and on his/her position in the United Nations system be achieved at an early stage. The activities for strengthening the Centre for Human Rights and the preparations for establishing the post of the High Commissioner for Human Rights should be coordinated.

11. As emphasized above, it is important that broad agreement on the Commissioner's mandate be reached at an early stage. The main substantive elements of the mandate of the High Commissioner for Human Rights should be:

(a) Developing the Centre for Human Rights into an effective component of the United Nations system capable of responding to the growing needs in the field of human rights and of providing the necessary information and expertise for implementation of other aspects of the High Commissioner's mandate;

(b) Promotion of system-wide coordination of United Nations action in the field of human rights. The concept of indivisibility and interdependence of human rights, universally endorsed at the World Conference on Human Rights, has to be developed at the level of practical action by a variety of United Nations organs and agencies. In particular, it will be necessary to put greater emphasis on the tasks concerning realization of economic, social and cultural rights and on policies designed to improve the situation of women, children and other vulnerable individuals and groups;

(c) Preparation of an annual report on the situation of human rights indicating the main problems in the field and the possible remedies. The report would focus not on country-specific situations but rather on the major types of human rights problems, including those arising from the violation of human rights, in various parts of the world. The report would assist the relevant

United Nations organs to develop appropriate responses to phenomena requiring action within the United Nations system;

(d) Immediate response to emergency situations urgently requiring information and action. The Commissioner would be empowered to bring any situation characterized by massive violations of human rights to the attention of the appropriate organ in the field of human rights and to propose necessary action. He/she should also have access, through the Secretary-General and in accordance with the Charter to the General Assembly and the Security Council;

(e) Fact-finding and good offices: the High Commissioner should be expected to pursue, under the authority of the Secretary-General and within his terms of reference in the field of preventive diplomacy, fact-finding missions and good missions of offices to Governments and any other concerned parties;

(f) Preparation and implementation of the human rights component of peace-keeping operations. The High Commissioner should be expected to prepare the background analysis, as well as specific proposals and plans, for implementation of the human rights aspects of peace-keeping operations. The decision on the necessity of that component would be taken by the Security Council, while the specifics of that part of the operation would have to be the responsibility of the High Commissioner;

(g) In the context of post-conflict peace-building activities, the High Commissioner would be expected to prepare plans for human rights activities and the realization of these plans once they are approved by the Security Council. It is understood that such plans would be prepared on a case-by-case basis;

(h) The High Commissioner would be entitled to appoint advisory teams composed of individuals and representatives of groups who could, in the opinion of the High Commissioner, provide the necessary expertise and other assistance needed in pursuit of his/her task;

(i) The High Commissioner would be expected to work in a public, transparent manner. His/her action would be under permanent public scrutiny, although confidential methods of work would be permitted on a temporary basis and strictly when needed for a given task.

B. Appointment

12. The High Commissioner should be a person of proven experience and expertise in the field of human rights, a person who has already achieved practical results in the field. Furthermore, he/she must be a person of the highest moral standing and proven independence, impartiality and objectivity.

13. The High Commissioner would be appointed for a period of seven years without the possibility of reappointment.

IV. RESOURCES

14. The Centre for Human Rights is the focal point for the human rights activities of the United Nations, and is the primary organizational unit within the Secretariat for the implementation of human rights programmes. The World Conference requested the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for human rights programmes within the existing and future regular budgets of the United Nations and to take urgent steps to seek increased extrabudgetary resources. It also requested that an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights and that sufficient human, financial and other resources be provided to the Centre. The current discussions concerning the establishment of the post of High Commissioner for Human Rights make these requests even more relevant. Improvement in resources of the Centre for Human Rights is an important part of strengthening the infrastructure needed for the High Commissioner's work.

15. Concern with the protection and promotion of human rights world wide has already led to a significant expansion of the activities and mandates entrusted to the Centre for Human Rights. In order to respond effectively to new challenges, a new organizational structure has recently been approved by the Secretary-General. The proposed structure takes into account the expanded activities and mandates of the Centre. As a result, an increase of financial resources is proposed under Section 21 (Human rights) of the regular budget for the biennium 1994-1995. The Fifth Committee and the General Assembly should favourably consider the proposed increase and approve it during its forty-eighth session. As for future budgets, financial resources for activities related to the High Commissioner for Human Rights and the Centre should be increased commensurate with their increased mandates, requirements and activities of the Commissioner and the Centre.

16. Under the circumstances of zero growth of the United Nations regular budget in real terms, a net increase of resources for human rights activities in the future regular budgets can be achieved through redeployment of resources from other sections and programmes that may have become obsolete or will have a reduced level of financial requirements compared to the past, subject to appropriate decisions by the Fifth Committee and the General Assembly. The importance and desirability of extrabudgetary resources and voluntary funding notwithstanding, it is vital to ensure, within the regular budget, a sufficient level of resources to guarantee the long-term financial stability of the Centre and the Office of the High Commissioner.

17. Extrabudgetary resources, through voluntary contributions to existing and future trust funds, are envisaged to play an increasingly important role in the funding of United Nations human rights activities and programmes. The World Conference called for generous contributions to this effect. Member States should be encouraged to increase the level of their voluntary contributions at an early stage of the United Nations budget cycle, thus facilitating budgetary projections for United Nations human rights activities.

V. CONCLUSION

18. The General Assembly has, at its forty-eighth session, two important tasks:

(a) Meaningful improvement of the situation of the Centre for Human Rights and consequently of activities supported by the Centre. To deal successfully with this task will require immediate decisions concerning increased resources in the manner suggested above and, if pursued successfully, it will render the necessary level of credibility to all other discussions concerning the enhancement of United Nations action in the field of human rights;

(b) The discussion on establishing the post of the United Nations High Commissioner for Human Rights should proceed hand-in-hand with the above process. A realistic expectation of success at the forty-eighth session of the General Assembly would include - at least - a decision on the establishment of the post of the High Commissioner for Human Rights and broad agreement on the basic elements of his/her mandate.